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EXAMINER

PATEL, RONAK C

ART UNIT

PAPER NUMBER

1788

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DELIVERY MODE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

1. Applicant's arguments filed 12/28/2010 have been fully considered but they are not persuasive.

With respect to the 112, first rejection of record, applicant argues that claim 13 does not include new subject matter; however, as support for the cited phrase, applicants note that the specification is silent about the tapes being laminated together with an offset. However, as set forth in MPEP 2173.05(i), the "mere absence of a positive recitation is not the basis for an exclusion." Applicants also argue that since layers A and B being offset is positively recited, Applicants may exclude this embodiment. However, while it is agreed that if alternative elements are positively recited in the specification, they may be excluded, "layers A and B not exhibiting offset" is not among a list of alternatives. Thus 112 first rejection has been maintained against claim 13.

2. Applicants filed declaration is not persuasive because it is not in commensurate in scope with the scope of the present claims because declaration shows data for only few types of woven material, while the claim is open to the use of any type of woven material. Further, there is no data at the lower end of the presently claimed basis weight range (40 g/m²). As set forth in MPEP 716.02 (d), whether unexpected results are the result of unexpectedly improved results or a properly not taught by the prior art, "objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support". In other words, the showing of unexpected results must be reviewed to see if the result occurred over the entire claimed range, *In*

Art Unit: 1788

re Clemens, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980). Applicant have not provided data to show that the unexpected results do in fact occur over the entire claimed range of 40 to 600 g/cm².

3. Further, the declaration only shows a few types of adhesives in interlayer C, i.e. acrylate hot melt adhesive, natural rubber adhesive, and UV crosslinked acrylate adhesive, whereas the claim broadly recites interlayer C as being composed of a viscoelastic adhesive, self adhesive or a double sided adhesive tape. Additionally, the data in Table 2 is not persuasive given that there is not proper side-by-side comparison between the comparative example B and the inventive examples C and D given that each example uses different type of adhesive. Therefore, it is not clear if the differences are due to the basis weight or to the type of adhesive used.

4. Applicant argues on page 6 of the amendment and in paragraph 20 of the declaration, that the data at from 60-320 g/m² reasonably support the surprising and unexpected improvement over the entire claimed range of the interlayer having a basis weight of 40-600 g/m². While it is agreed that the nonobviousness of a claimed range may be supported by data showing unexpected results of a narrower range if one of ordinary skill in the art would be able to determine a trend in the exemplified data, in the present case, there is no trend, especially at the lower end of the claimed basis weight range. While applicants have data at one point at the lower end of the range, i.e. 60 g/m², this does not allow a trend to be ascertained. This is especially significant given that the basis weight of Samson-Himmelstjerna overlaps the claimed basis weight at the lower end of the claimed range

5. Applicant argues that Samson-Himmelstjerna does not teach or suggest manipulating the basis weight of Interlayer C within the presently claimed range should have the dramatic improvement on abrasion and scuff resistance. As Samson-Himmelstjerna et al. (US 2003/0198806) in view of Zafiroglu (US 7622408) discloses a highly abrasion resistant tape with a basis weight of 135-339 g/m², falls clearly within the range presently claimed to form a composite material with improved structural strength and rigidity. It is noted that even if the declaration were proper, the rejection of Samson-Himmelstjerna in combination with Zafiroglu would still be maintained given that Zafiroglu already establishes the criticality of using basis weight identical to that presently claimed.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RONAK PATEL whose telephone number is (571)270-1142. The examiner can normally be reached on Monday to Thursday 8 AM EST to 6PM EST.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 1788

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/R. P./
Examiner, Art Unit 1788
01/10/2010

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1787